

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to civil money penalty fund and providing an opportunity for public comment

The Department of Human Services hereby proposes to amend Chapter 81, “Nursing Facilities,” and to rescind Chapter 166, “Quality Improvement Initiative Grants,” Iowa Administrative Code, and to adopt a new Chapter 166 with the same title.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.57.

Purpose and Summary

These amendments align administrative rules with federal regulations regarding the use of civil money penalties (CMP) imposed by the Centers for Medicare and Medicaid Services (CMS). These amendments also update the Department’s process in how and when the Department requests applications for grant proposals. These amendments remove the evaluation and scoring criteria from administrative rules as this information will be incorporated in the formal request for application and will allow flexibility to update Departmentwide processes without having to change administrative rules.

Fiscal Impact

There are no costs associated with this rule making. A change in the criteria and process for awarding these grants could potentially change which entities qualify, but funding is already set aside in the civil money penalty fund and at no time shall the grant set-aside cause the civil money penalty fund to drop below \$1 million.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 6, 2018. Comments should be directed to:

Harry Rossander
Bureau of Policy Coordination
Department of Human Services
Hoover Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: policyanalysis@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. An oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, an agency, or an association of 25 or more persons as provided in Iowa Code section 17A.4(1)“b.”

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **441—81.1(249A)**, definition of “Facility,” as follows:

“Facility” means a licensed nursing facility certified in accordance with the provisions of 42 CFR Part 483, 483.5 as amended to September 23, 1992 December 4, 2017, to provide health services and includes hospital-based nursing facilities that are Medicare-certified and provide only skilled level of care and swing-bed hospitals unless stated otherwise.

ITEM 2. Amend rule 441—81.53(249A) as follows:

441—81.53(249A) Use of penalties collected by the department. Civil money penalties collected by the department shall be applied to the protection of the health or property of residents of facilities that the department of inspections and appeals finds deficient. Funds may be used for:

1. ~~Payment for the cost~~ Time-limited expenses incurred in the process of relocating residents to home- and community-based settings or other facilities when a facility is closed or downsized pursuant to an agreement with the department;

2. Recovery of state costs related to the operation of a facility pending correction of deficiencies or closure;

3. ~~Reimbursement of residents for personal funds or property lost at a facility as a result of actions by the facility or by individuals used by the facility to provide services to residents; and~~ Support and protection of residents of a facility that closes;

4. Funding of projects to improve the quality of life or and quality of care of nursing facility residents through quality improvement initiative grants awarded pursuant to 441—Chapter 166;

5. Projects that support resident and family councils and other consumer involvement in ensuring quality care in facilities; and

6. Reasonable expenses incurred by the department to administer, monitor, or evaluate the effectiveness of grants utilizing civil money penalty funds.

ITEM 3. Rescind 441—Chapter 166 and adopt the following **new** chapter in lieu thereof:

CHAPTER 166
QUALITY IMPROVEMENT INITIATIVE GRANTS

PREAMBLE

These rules define and structure grants to be funded from collected civil money penalties. The grant funds are available for activities that protect or improve the quality of care and quality of life for residents of a nursing facility.

441—166.1(249A) Definitions.

“Eligible entities” means nursing facilities, state agencies, nursing facility advocacy groups, resident and family councils, and other nursing facility stakeholder groups.

“Nursing facility” means a Medicaid-enrolled facility that is defined in rule 441—81.1(249A) as “facility.”

“Quality improvement initiative” or *“initiative”* means a project or training in accordance with provisions of 42 CFR 488.433 as amended to December 4, 2017, that directly or indirectly supports and benefits the quality of care and quality of life of nursing facility residents.

441—166.2(249A) Availability of grants. The department shall set aside an annual amount from the civil money penalty fund established pursuant to Iowa Code section 249A.57 to be awarded in the form of grants to eligible entities for approved quality improvement initiatives. At no time shall the grant set-aside cause the civil money penalty fund to drop below \$1 million.

166.2(1) In any calendar year in which sufficient funds are available in the civil money penalty fund to support quality improvement initiative grants, the department may issue a notice for applications for grants.

166.2(2) There is no entitlement to any funds available for grants awarded pursuant to this chapter. The department may award grants to the extent funds are available and, within its discretion, to the extent that applications are approved.

166.2(3) The allocation of funds shall be in compliance with state and federal law and approved by the Centers for Medicare and Medicaid Services (CMS).

441—166.3(249A) Grant eligibility. Grants are available only for quality improvement initiatives that are outside the scope of normal operations for the nursing facility or other applicants. Grants cannot be used as replacement funding for goods or services that the applicant already offers.

166.3(1) Grants may be awarded for:

- a.* Short-term quality improvement initiatives (three years or less), and
- b.* Initiatives with a longer term that involve collaborative efforts of state government and various stakeholders.

166.3(2) The department will comply with CMS guidance on civil money penalty uses.

441—166.4(249A) Grant application process and selection of proposals. The department will announce through a request for proposals the opening of an application period. The request will state the purpose for which grant funds may be sought. Applicants shall submit their grant proposals by the deadline specified in the announcement.

166.4(1) Evaluation of proposals. All proposals completed as directed and submitted within the time frames allowed will be evaluated by the grant review committee to determine which applicants’ project plans will be submitted for CMS approval.

166.4(2) The department will submit the project plan for each grant the department intends to award, along with any required documentation, to CMS to seek approval or denial of the proposed project. All activities and plans for utilizing civil money penalty funds must be approved in advance by CMS.

441—166.5(249A) Project contracts. Grants for approved applicant project plans will be awarded through a contract entered into by the department and the applicant. The contract period shall not

exceed the time frames allowed by state and federal laws. The department will reimburse expenditures pursuant to contract terms and the regular reimbursement procedures of the state of Iowa.

These rules are intended to implement Iowa Code section 249A.57.